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Remarks

Claims 1-54 are pending in the above-identified patent application. With this Response, claims 1, 27, 29, and 35 are amended. The claim amendments are fully supported by the application as originally filed (discussed below). Upon entry of the current amendments, claims 1-54 are pending.

Applicant respectfully requests reconsideration and allowance of the application in view of the present amendments and following remarks.

Claim Rejections under 35 USC § 112

Claims 1, 27 and 29 have been rejected under 35 U.S.C. §112, first paragraph, as failing to comply with the enablement requirement. Specifically, the previously submitted amendment reciting that “the dough composition is refrigeration stable for a time period of 12 weeks or greater” is objected to as including a time period of “anywhere from 13 weeks to years,” and indicating that there is no example showing that the dough is stable for a period of time extending well beyond 12 weeks.

The claims have been amended to recite that “the dough composition is refrigeration stable for a time period of at least twelve weeks.” Thus, the claim has been amended to recite that the dough composition is refrigeration stable for a definite minimum period of twelve weeks, rather than a potentially variable time period of 12 weeks or greater. While it is possible (and indeed, highly likely) for dough compositions to be prepared in accordance with the present invention that could be refrigeration stable for longer than 12 weeks, the claims only require that the dough composition be refrigeration stable for a minimum threshold period of 12 weeks.

Claim 1 has been rejected under 35 U.S.C. §112, first and second paragraphs, as failing to comply with the written description requirement and being indefinite, specifically objecting to the use of the term “barrier material” in combination with “encapsulated.” The claim has been amended to use terminology from claim 35 that has been indicated to be acceptable.

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Claim Rejections under 35 USC 103(a)

Claims 1-42 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Kuechle et al. (U.S. Pat. No. 6,436,458) in view of Gulstad et al. (U.S. Pat. No. 3,767,421).

Applicant respectfully submits that this rejection is moot because all four independent claims 1, 27, 29, and 35, are amended to include the requirement that the recited dough composition "is refrigeration stable for a time period of at least twelve weeks." Support for this amendment can be found in the application as originally filed at, e.g., page 4, lines 21 and 22. Thus, the present invention surprisingly provides a convenient dough product that does not need to be frozen to provide effective long-term storage. In contrast to the prior art, the present invention provides a dough composition that is refrigeration stable for a time period of at least twelve weeks.

The primary reference, Kuechle et al., does not teach, motivate, or suggest that its doughs can be refrigeration stable as recited in amended claims 1, 27, 29, and 35. Kuechle et al. describes a dough that is designed for shipping in the frozen state, followed by refrigeration for short periods of time. This dough is specifically noted to have only short term stability in the refrigerated state, at numerous locations in the specification. See column 1, line 56, column 3, line 28, column 7 line 9 and column 8, line 32.

In the above referenced interview, it was discussed whether Kuechle et al contemplated provision of the dough without freezing, but rather as a refrigerated product throughout the life of the product. Close inspection of the Kuechle disclosure reveals that this product is indeed specifically designed and taught to be used in the configuration of an initially frozen product.

Specifically, the background section of the Kuechle disclosure first discusses the concept of providing ready-made doughs in either frozen or refrigerated formats. In the background discussion of column 1, lines 30-36, the general convenience of doughs that can be stored under frozen and/or refrigeration conditions are acknowledged. This portion of the disclosure, however, is only a discussion of the wishes for convenience of desirable products. The discussion of actual products of the invention begins in the Kuechle specification at column 1, line 51. At this point, the object of the invention is noted to be as follows:

A scoopable dough of the invention is shelf stable without storage under a vacuum at freezing temperatures and refrigeration temperatures. The dough is shelf stable at freezing temperatures for

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between about 2 months and about 6 months. Moreover, after thawing, the dough is shelf stable at refrigeration temperatures for between about 1 day and about 7 days.

Freezing of the dough in the first portion of the product life is essential to provide the benefit of being able to package the product without excessive environmental control. Thus, at column 2, lines 12-15 it is noted that:

A scoopable dough of the invention can be packaged without deoxygenating and hermetically sealing the package.

It is apparent that prior freezing of the dough and shipping in frozen form is an essential component of providing the desired overall storage stability of the product. Thus, the dough product is stated in non-alternative language to be frozen after packaging. See column 12, lines 56-59:

After a scoopable dough of the invention is deposited into a container, the scoopable dough of the invention is frozen to a temperature suitable for shipping the scoopable dough of the invention. (emphasis added)

The skilled artisan thus is affirmatively taught that the prior art product must be frozen for shipping.

Alternatively, one can carefully read Kuechle for any disclosure that describes a refrigerated shelf life that additionally does not expressly discuss that the product is initially frozen. The only such portion that has been identified by the undersigned is located at Column 8, lines 28-33, which unambiguously states that the shelf life of refrigerated products disclosed therein is up to about seven days. Thus, even if one were to assert that Kuechle describes an embodiment where the refrigerated product does not need to be initially frozen, it is apparent that the Kuechle product would not meet dough composition refrigeration stability requirements as set forth in the present claims.

The secondary reference, Gulstad et al., fails to cure the deficiencies of the Kuechle et al. reference. That is, the Gulstad et al. reference fails to teach, motivate, or suggest how, alone or in combination with the Kuechle et al. reference, to achieve a refrigerator stable dough composition as recited in claims 1, 27, 29, and 35.

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Applicant respectfully submits that independent claims 1, 27, 29, and 35 are patentable over Kuechle et al. in view of Gulstad et al. Likewise, claims depending from claims 1, 27, 29, and 35 are patentable over Kuechle et al. in view of Gulstad et al.

Accordingly, Applicant respectfully requests that the rejection of claims 1-42 under 35 U.S.C. 103(a) as being unpatentable over Kuechle et al. in view of Gulstad et al. be withdrawn.

Conclusion

The Examiner is invited to contact the undersigned, at the Examiner's convenience, should the Examiner have any questions regarding this communication or the present patent application.

Respectfully Submitted,

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By: 

Dale A. Bjorkman, Reg. No. 33,084
Customer Number 33072
Phone: 651-275-9811
Facsimile: 651-351-2954

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